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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

TAMARA REEDER, an individual,

Plaintiffs,

vs.

SELENE FINANCE, LP, a Delaware limited partnership; and MTC FINANCIAL, INC., d/b/a TRUSTEE CORP, a California corporation,

Defendants.

Case No. 3:23-cv-05986-SK

Assigned to Hon. Rita F. Lin

**SELENE FINANCE, LP'S REPLY IN
SUPPORT OF MOTION TO DISMISS
COMPLAINT**

[FRCP Rule 12(b)(6)]

Motion Hearing Date:

Date: April 23, 2024

Time: 10:00 p.m.

Ctrm: 15 – 18th Floor

TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Defendant SELENE FINANCE, LP (“Defendant” or “Selene”) hereby submits this reply brief (“Reply”) in support of its Motion to Dismiss the Complaint of Plaintiff TAMARA REEDER (“Plaintiff”) as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 Plaintiff's Opposition fails to substantively address the arguments in the Motion
4 to Dismiss and presents nothing to suggest that Plaintiff can remedy the Complaint via
5 amendment. The Opposition confirms what Selene presumed from reading the bare-
6 bones Complaint – Plaintiff is attempting to assert a pre-foreclosure challenge to
7 Selene's authority to foreclose, which Plaintiff lacks standing to do as a matter of law.
8 Rather than address the arguments in the Motion to Dismiss, Plaintiff has resorted to
9 threatening sanctions and disbarment proceedings against Selene's counsel in an effort
10 to intimidate Selene into withdrawing its Motion. This is improper.

11 Moreover, Plaintiff's purported evidence lacks proper foundation, is irrelevant
12 and meritless. Even if Plaintiff's "new evidence" (in the form of an affidavit by a
13 private investigator, without personal knowledge of the facts, who has not been
14 designated an expert witness) were to be considered, it is meritless. Such securitization
15 theories have been continuously rejected by California Courts and those in other
16 districts that have also found affidavits by Joseph R. Esquivel, Jr. to be irrelevant,
17 immaterial and inadmissible.

18 For these reasons and as set forth in more detail below, this Motion should be
19 granted, without leave to amend.

II. ARGUMENT

A. Plaintiff Has Failed to Substantively Oppose the Motion

22 Plaintiff's Opposition also does nothing to address the Motion's arguments that
23 (1) Plaintiff lacks standing to assert a preemptive challenge to Selene's authority to
24 foreclose, and (2) Plaintiff has failed to sufficiently allege any wrongful conduct by
25 Selene, much less provide any facts demonstrating that Selene has committed elder abuse
26 or violated numerous debt collection and reporting statutes. Plaintiff's failure to address
27 these issues in her Opposition is telling. As Plaintiff has failed to address the arguments

1 raised in the Motion, the Court should infer that Plaintiff has conceded these arguments
2 have merit and the Motion should be granted. *See Silva v. U.S. Bancorp*, 2011 WL
3 7096576, at *3 (C.D. Cal., Oct. 6, 2011) (“[w]hen a plaintiff files an opposition to a
4 motion to dismiss addressing only certain arguments raised by the defendant, a court
5 may treat those arguments that the plaintiff failed to address as conceded.”) (quoting
6 *Hopkins v. Women’s Div., Gen. Bd. Of Global Ministries*, 238 F.Supp.2d 174, 178
7 (D.D.C. 2002)). Moreover, Plaintiff presents no facts to suggest that she could get
8 around the Complaint’s deficiencies via an amendment. Thus, the Motion should be
9 granted with prejudice.

10 **B. Plaintiff Should Not Be Granted Leave to Amend**

11 Plaintiff’s Opposition is nothing more than a continuation of the threats asserted
12 in her letter to counsel. To the extent she incorporates her Opposition to Co-
13 Defendant’s Motion to Dismiss, those arguments fail as a matter of law. Plaintiff’s
14 Opposition to Co-Defendant’s Motion to Dismiss merely recites numerous “sovereign
15 citizen” inspired theories (e.g., lack of jurisdiction, treason, federal territory
16 restrictions, acts of congress, confederate states, no “money” or consideration for loan,
17 etc.) that have long been held as frivolous and without legal merit. *See Richson-Bey v.*
18 *Palmer*, 2023 WL 4274345, at *3 (E.D. Cal., June 29, 2023) (“While many various
19 sub-groups and ideologies may fall under the sovereign-citizen umbrella, the
20 overarching unifying principle is the belief that, even though they physically reside in
21 this county, the state and/or federal governments lack constitutional legitimacy and
22 therefore have no authority to regulate their behavior... Arguments and claims arising
23 from the sovereign citizen ideology are routinely rejected by countless federal courts.”)
24 (citations omitted); *see also, Vachon v. Reverse Mortgage Solutions, Inc.*, 2017 WL
25 6628103, at *5-6 (C.D. Cal., Aug. 11, 2017) (“While the Court must take plaintiff’s
26 factual allegations as true when ruling on a motion to dismiss, the Court need not accept
27 the pseudo-legal conclusion that ‘there is no money’ and that all loan contracts are void.

1 The redemption and vapor money theories have been dismissed as patently frivolous
2 by this circuit and across the country.”) (citations omitted).

3 Moreover, Plaintiff’s purported evidence in the form of an affidavit that she
4 “believes is true” is not based on anything within Plaintiff’s personal knowledge but
5 rather a private investigator whose similar affidavits have been rejected by numerous
6 other Courts. *Hill v. United States Bank, N.A.* (C.D. Cal. 2019) 2019 U.S. Dist. LEXIS
7 130988, *2-27 (granting Bank’s Motion to Dismiss a Complaint predicated on a Joseph
8 R. Esquivel, Jr. affidavit of similar content); *Trebas v. Guild Mortg. Co.* (D. Mon.
9 2018) 2018 U.S. Dist. LEXIS 128044, *10 (granting summary judgment in favor of the
10 bank, finding that “Esquivel’s assertion constitutes speculation that whatever interest
11 was transferred might have been the beneficial interest in the deed of trust.”);
12 *Prendeville v. J.P. Morgan Chase Bank* (D. Nev. 2022) 2022 U.S. Dist. LEXIS 79867,
13 *1-3 (denying a temporary restraining order predicated on a similar Joseph R. Esquivel,
14 Jr. affidavit); *Lakeview Loan Servicing v. Mobley* (N. D. Ga. 2022) 2022 U.S. Dist.
15 LEXIS 33538, *5-6, 2022 WL 552740 (denying a motion for reconsideration by a
16 borrower: “Mobley’s argument is based exclusively on the Esquivel Affidavit, in which
17 Esquivel, a licensed private investigator, opines that the loan Mobley entered into with
18 Prospect was securitized in the Ginnie Mae REMIC Trust 2012-096 in August of 2012.
19 Esquivel Aff. ¶¶ 17, 21, 34. There are two flaws with Mobley’s argument: (1) this
20 evidence is not new, and (2) the Esquivel Affidavit is not evidence of anything relevant
21 to any material issue in this case.”). As explained by the District Court for the Northern
22 District of Georgia in *Basson v. Fay Servicing, LLC* (N.D. Ga. 2023) 2023 U.S. Dist.
23 LEXIS 178950, *9-11, even if Esquivel’s theories regarding securitization were true,
24 they are without merit:

25 Given the protracted litigation in this case, the Court need only address
26 the most recent attack on foreclosure. At present, Plaintiffs proffer an
27 “affidavit” and “Chain of Title Analysis & Mortgage Fraud
28 Investigation” from Joseph R. Esquivel, Jr. (“Esquivel”), a private
investigator in the State of Texas, in an effort to thwart the August 1

1 foreclosure. [Dkt. 2-3, Exhibit B - Affidavit and Investigation of Joseph
2 R. Esquivel, Jr. ("Esquivel Aff.")]. Plaintiffs rely on Esquivel and
3 argue that the Fay Defendants lack standing to foreclose since the
4 Security Deed was assigned into the Fannie Mae REMIC Trust without
5 a transfer of the Note, and that, as a result, the Trust never acquired rights
6 that could be transferred. [Esquivel Aff., ¶¶ 94-95].

7 The Court finds and concludes that the Bassons' claims concerning
8 "securitization" of the loan are without merit. "Regardless of whether the
9 loan was 'pooled' or 'securitized,' the debtor still has an obligation to
10 repay." Searcy v. EMC Mortg. Corp., No. 1:10-CV-965-WBH (N.D. Ga.
11 Sept. 30, 2010) (Hunt, J.) ("While it may well be that Plaintiff's mortgage
12 was pooled with other loans into a securitized trust that then issued bonds
13 to investors, that fact would not have any effect on Plaintiff's rights and
14 obligations with respect to the mortgage loan, and it certainly would not
15 absolve Plaintiff from having to make loan payments or somehow shield
16 Plaintiff's property from foreclosure.").

17 **Esquivel's theories have been rejected by other judges in this**
18 **district.** See, e.g., Lakeview Loan Servicing LLC v. Mobley, 2022 U.S.
19 Dist. LEXIS 33538, 2022 WL 552740 (N.D. Ga. Jan. 13, 2022) (stating
20 that the Esquivel Affidavit is "wholly irrelevant" and "does not do
21 anything but confirm (1) the existence of the assignment and transfers of
22 the security deed . . . and (2) that no ownership interest was transferred
23 to the Ginnie [*11] Mae REMIC Trust 2012-096"); Fed. Nat'l Mortg.
24 Ass'n v. Harris, 2012 U.S. Dist. LEXIS 202802, 2012 WL 13013000, at
25 *2 (N.D. Ga. Aug. 13, 2012).

26 Accordingly, leave to amend should be denied.

27 **III. CONCLUSION**

28 For the foregoing reasons, Plaintiff's Complaint fails to state any valid cause of
action against Selene. Accordingly, the Complaint should be dismissed, with prejudice.

29 WRIGHT, FINLAY & ZAK, LLP

30 Dated: April 2, 2024

31 By: 
32 Kathryn Moorer, Esq.
33 Attorneys for Defendant SELENE
34 FINANCE, LP

PROOF OF SERVICE

I, Debbi Bosman, declare as follows:

I am employed in the County of Orange, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 4665 MacArthur Court, Suite 200, Newport Beach, California 92660. I am readily familiar with the practices of Wright, Finlay & Zak, LLP, for collection and processing of correspondence for mailing with the U.S. Postal Service. Such correspondence is deposited with the U.S. Postal Service the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

On April 2, 2024, I served the within **SELENE FINANCE, LP'S REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT** on all parties in this action as follows:

[X] by placing [] the original [X] a true copy thereof enclosed in sealed envelope(s) addressed as follows:

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Attorneys for Defendant MTC Financial Inc. dba Trustee Corps

(BY MAIL SERVICE) I placed such envelope(s) for collection to be mailed on this date following ordinary business practices.

[] (BY FEDERAL EXPRESS - NEXT DAY DELIVERY) I placed true and correct copies thereof enclosed in a package designated by Federal Express with the delivery fees provided for.

(CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed by electronic mail at the e-mail address(es) set forth above pursuant to Fed.R.Civ.P.5(b)(2)(E). "A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon

1 completion of an electronic filing. The NEF, when e-mailed to the e-mail
2 address of record in the case, shall constitute the proof of service as required by
3 Fed.R.Civ.P.5(b)(2)(E). A copy of the NEF shall be attached to any document
served in the traditional manner upon any party appearing pro se.”

4 [X] (Federal) I declare under penalty of perjury under the laws of the United States
5 of America that the foregoing is true and correct.

6 Executed on April 2, 2024, at Newport Beach, California.

7 Debby Bosman

8 Debby Bosman

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